

Subject: Comments on Designation of Critical Habitat
From: "Jenkins, Pam" <pjenkins@portoftacoma.com>
Date: Tue, 15 Aug 2006 10:23:58 -0700
To: <orcahabitat.nwr@noaa.gov>

Please find attached written comments and a pictorial exhibit from the Port of Tacoma regarding the proposed designation of critical habitat for the Southern Resident killer whale. I apologize for submitting these comments to you late. We were experiencing network difficulties on August 14, which delayed the transmission. We would very much appreciate your consideration of these comments in spite of the late submittal.

Thank you for your consideration.

Pam Jenkins, P.E.
Director, Environmental Programs
Port of Tacoma
PO Box 1837, Tacoma WA 98401-1837
pjenkins@portoftacoma.com
253-428-8659



<p>Proposed Critical Habitat Designation - Killer Whales.pdf</p>	<p>Proposed Critical Content-Description: Habitat Designation - Killer Whales.pdf Content-Type: application/octet-stream Content-Encoding: base64</p>
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<p>Exclusion Area Port of Tacoma.jpg</p>	<p>Content-Description: Exclusion Area Port of Tacoma.jpg Content-Type: image/jpeg Content-Encoding: base64</p>
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August 14, 2006

Chief, Protected Resources Division
National Marine Fisheries Service
1201 NE Lloyd Blvd., Suite 1100
Portland, OR 97232-1274
Email: orcahabitat.nwr@noaa.gov

RE: Proposed Critical Habitat Designation for Southern Resident Population of Killer Whales

Dear Sir or Madam:

The purpose of this letter is to provide comments regarding NOAA Fisheries' proposed critical habitat designation for the Southern Resident Population of killer whales (71 FR 34572, June 15, 2006). Section 4(b)(2) of the Endangered Species Act allows NOAA to exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species. We firmly believe that the benefits of excluding port areas from the proposed designated critical habitat area clearly outweigh the benefits of inclusion, and that such exclusion will not result in extinction of the species.

This letter outlines several reasons that support the exclusion of the Port of Tacoma and other port areas from the proposed critical habitat area. Please see the accompanying figure which shows the proposed Port of Tacoma exclusion area. First, there would be little or no benefit whatsoever to the endangered whale populations if the port areas are included. Second, implementation of the critical habitat designation within the seaport areas would be unnecessarily expensive and redundant with Chinook salmon critical habitat protections. Third, designation of the port areas would be economically disadvantageous. Finally, such designation would be inconsistent and incompatible with current national security responsibilities carried by the ports.

Inclusion Would Provide No Benefit to Species Recovery

The Ports of Tacoma and Seattle are not killer whale habitat. Killer whale sightings within or within close proximity to the Port of Tacoma have been extremely rare in recent years. The Port of Tacoma was established in 1918, and was created through decades of dredging channels and filling peninsulas to create wharf area and industrial space. The Port of Seattle has an equally long history of shoreline development. Though these portions of Puget Sound may once have hosted killer whales, there are no data to support the supposition that killer whales have used these areas as habitat in several decades. One of the designation standards set forth under Section 3 of the Endangered Species Act (ESA) is that the proposed designated habitat be

“occupied by the species at the time it is listed.” It is doubtful whether this threshold criterion can be met within the areas of Port of Seattle and Port of Tacoma operations.

The seaport areas do not contain “those physical or biological features essential to the conservation of the species,” which is another of the designation standards set forth under Section 3 of the ESA. The primary ecological connection of these port areas (and a Primary Constituent Element) for Southern Residents is that the areas are used for rearing and migration by Puget Sound Chinook salmon, an important prey species. However, excluding the Port areas from Southern Resident killer whale critical habitat designation would still be protective because these areas overlap with the designated critical habitat for the Chinook salmon. Therefore, any killer whale impacts would already be addressed by the critical habitat designation for Chinook.

If potential impacts to killer whales were identified regarding a proposed seaport project, it is doubtful whether any special management considerations or protections could be provided. These are defined as “any methods or procedures useful in protecting physical and biological features of the environment for the conservation of the species” [50 CFR 424.02(j)]. The ports are not killer whale habitat, and have no features that would make passage or visitation particularly attractive. It would be potentially counterproductive to enhance any port features with the intent of making these areas more appealing or suitable for whale passage or occupation, as there are many far more suitable areas within Puget Sound for whales to travel, rest, and feed.

Finally, the port areas that we propose for exclusion represent a very small percentage of total area available to Southern Resident populations in western Washington waters. Exclusion of the Port of Tacoma would represent less than one percent of the total proposed habitat area, and is likely to have no impact whatsoever on the well being or recovery of the endangered pods.

Inclusion Imposes an Unnecessary Economic Responsibility

The Ports of Seattle and Tacoma are critical to the economic vitality of Washington State. The Port of Tacoma currently generates 43,138 jobs in Pierce County and 113,160 jobs in Washington related to Port activities. Together, the two ports move over \$40 billion worth of export and import goods each year. Governor Christine Gregoire has recognized the key role that these two ports play in the state’s economy, and that the ports are subject to many stringent and complex environmental requirements.

There are no data that indicate port activities put killer whales at risk or that port areas are an essential portion of killer whale habitat. NOAA Fisheries’ report, *Economic Impacts Associated with Potential Critical Habitat Designation for the Southern Resident Population of Killer Whales*, did not address potential impacts to port operations at all. The impacts of including port operations areas in designated critical habitat are potentially significant and should have been addressed.

There is substantial cost in obtaining consultation on every new port project (that is subject to Federal authorization or funding) for the purpose of detailed examination of killer whale habitat

issues. Already, ports obtain consultation for listed salmon in relation to proposed projects. Due to the interrelatedness of killer whales with their primary food source (salmon), requiring additional consultation is not likely to result in any measurable environmental benefit.

Excluding Port Areas Is Important to National Security

NOAA is proposing to exclude from critical habitat designation 18 military sites owned by the Department of Defense, on the basis that designation would pose an "impact to national security." Military sites are not the only locations that are likely to be national security targets or areas that will be essential for sustaining operations in the event of a national security crisis. Large seaports are both potential national security targets, as well as critical locations for recovery, access, and logistics during a national security event or natural disaster.

Under the Marine Transportation Security Act (MTSA, PL-107-295, November 2002), ports were identified as international boundaries that are particularly vulnerable to breaches in security, might present weaknesses in the ability of the United States to realize its national security objectives, and might serve as a vector or target for terrorist attacks aimed at the United States. Congress recognized that owners and operators of vessels and marine facilities may play a vital role in detecting, deterring, and responding to attacks against U.S. territory, population, vessels, facilities, and critical maritime infrastructure by terrorist organizations (68 Federal Register 60448, Oct. 22, 2003).

The ports have been recognized as key locations for recovery efforts in the event of a national security event or natural disaster. For example, if a large airport were damaged or closed due to terrorist activity, nearby seaports would become a significant portal for rescue personnel and equipment; delivery of food, supplies, and housing materials; and potentially also for the evacuation of personnel from the affected area.

The Ports of Tacoma and Seattle have been required to implement stringent security programs in several of their terminals and operations. In addition, both the Ports of Olympia and Tacoma load and offload a significant amount of military equipment and vehicles that are directly related to security operations overseas.

Exclusion of military sites from habitat designation, as proposed, and inclusion of ports would constitute an inconsistent and inaccurate interpretation of the language in Section 4(b)(2) related to national security. Including port areas within the critical habitat designation would be incompatible with the goals of national security, inconsistent with the provisions of MTSA, and counterproductive to the responsibilities of the ports as participants in national security.

Summary and Request for Exclusion

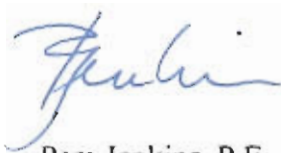
In summary, there are several reasons to exclude port areas from the proposed critical habitat area. There would be little or no benefit whatsoever to the endangered whale populations

because the small areas being requested for exclusion are a very small percentage of the entire habitat area, are not currently killer whale habitat, and have not been habitat for many years. Implementation of the critical habitat designation within the seaport areas would be unnecessarily expensive and redundant with Chinook salmon critical habitat protections. It is very likely that no special management considerations or protections could be provided. Designation of the port areas would be economically disadvantageous to Washington's two major seaports. Designation of these areas would also be inconsistent and incompatible with current national security responsibilities borne by the ports.

We strongly urge you to exclude port areas from the Southern Resident killer whale critical habitat designation. If you have any questions regarding these comments, please feel free to contact me at (253) 428-8659.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pam Jenkins", is written over a light blue rectangular background.

Pam Jenkins, P.E.
Director, Environmental Programs

Enclosure

cc: Lou Paulsen, Sr. Director, Facilities Development
Eric Johnson, Washington Public Ports Association
Kari Qvigstad, Port of Olympia
Susan Ridgley, Port of Seattle